

TITLE VIII

CONCILIATION AGREEMENT

among

The Equal Rights Center

and

The United States Department of Housing and Urban Development

and

McWilliams/Ballard, Inc.

Nova-Habitat, Inc.

The City of Falls Church, Virginia

Waterford Development, LLC

Waterford Development-Falls Church, LLC

HUD CASE NUMBERS:

03-04-0318-8

03-04-0320-8

03-04-0321-8

03-04-0322-8

03-04-0323-8

175303

175306

175307

PREAMBLE

On January 16, 2004, the Secretary of the United States Department of Housing and Urban Development (the Department) initiated an investigation (Secretary-initiated investigation) of Nova-Habitat, Inc., Waterford Development, LLC, and the City of Falls Church, Virginia for possible violations of the Fair Housing Act, 42 U.S.C. 3601 *et seq.* (the Act), in the development, marketing, and sale of housing units at the Broadway, an 80-unit mixed-use condominium development located at 502 West Broad Street in Falls Church, Virginia. The Secretary-initiated investigation was commenced pursuant to the Secretary's authority under 42 U.S.C. § 3610(a)(1)(A)(iii).

On May 17, 2004, the Equal Rights Center filed a complaint (the Equal Rights Center complaint) with the Department alleging that McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, Waterford Development-Falls Church, LLC, and the City of Falls Church (hereinafter, referred to collectively as the Respondents) violated §§ 804(a), 804(b), 804(c), and 804(d) of the Act on the basis of familial status through the development, marketing, and sale of housing units at the Broadway.

The Respondents deny having violated the Act. All parties agree to enter into this conciliation agreement in order to fully resolve all matters within the scope of the Secretary-initiated investigation and the Equal Rights Center complaint.

Background

On March 26, 2001, the City of Falls Church enacted Ordinance 1695 to amend its zoning laws. Under prior zoning laws, mixed-use developments (i.e., those with commercial and residential purposes) were not permitted in the City of Falls Church. Ordinance 1695 creates a process by which a developer may apply for a special exception to the prohibition of developing mixed-use projects.

On June 1, 2001, Nova-Habitat, Inc., applied for a special exception for the Broadway to be a mixed-use development. On September 10, 2001, the Falls Church City Council passed a resolution to grant a special exception for the Broadway (SE01-0013). SE01-0013 incorporated a term sheet. Condition 2 of the term sheet, entitled "School Mitigation Measures", required, in part, that "in the event that the actual number of school age children exceeds the Acceptable School Impact number (of eight) the mitigation measure shall be equal to \$15,000 per excess school age child." According to condition 2 of the term sheet, the mitigation measure was to be paid from a two hundred twenty five thousand dollar (\$225,000.00) escrow account. The escrow account was to be funded by Waterford Development, LLC and Nova-Habitat, Inc. However, Waterford Development, LLC and Nova-Habitat, Inc. never funded the escrow account.

On January 12, 2004, the Falls Church City Council passed Resolution 2004-4. Resolution 2004-4 deleted condition 2 of the term sheet incorporated into SE01-0013. In Resolution 2004-4, the City of Falls Church reaffirmed its commitment to fair housing

practices and that it welcomes families with children as residents. Resolution 2004-4 also reaffirmed the City of Falls Church's practice of seeking voluntary per unit school mitigation contributions in consideration of rezoning and special exception applications.

A. GENERAL PROVISIONS

This Conciliation Agreement (Agreement) will remain in effect for a period of two (2) years from the effective date of the Agreement. The Agreement becomes effective upon the signature of the Assistant Secretary for Fair Housing and Equal Opportunity (Assistant Secretary), or her designee.

2. This Agreement does not constitute an admission against interest by any or all of the Respondents.
3. The Equal Rights Center, the Department, and the Respondents acknowledge that this Agreement is a voluntary and full settlement of the Secretary-initiated investigation and the Equal Rights Center complaint. The Equal Rights Center and the Respondents affirm that they have not been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
4. The Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. The Respondents further acknowledge that any retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act.
5. This Agreement, after it has been signed by the Assistant Secretary or her designee, is binding upon the Equal Rights Center, the Respondents, and the heirs, executors, assigns, agents, employees and attorneys of these entities.
6. Pursuant to § 810(b)(4) of the Act, this Agreement is a public document.
7. The Equal Rights Center hereby forever waives, releases, and covenants not to sue the Department, Waterford Development, LLC, Waterford Development-Falls Church, LLC, Nova-Habitat, Inc., McWilliams/Ballard, Inc. and/or the City of Falls Church, and/or the heirs, executors, assigns, agents, elected officials, officers, council and board members, employees and attorneys of these entities with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 03-04-0318-8, 03-04-0320-8, 03-04-0321-8, 03-04-0322-8, 03-04-0323-8, 175303, 175306, and 175307 or which could have been filed in any action or suit arising from said subject matter. The Equal Rights Center agrees that it will not solicit or otherwise seek to procure, promote, instigate, or encourage cases specifically related to the claims resolved in this Agreement.

8. While the Agreement fully resolves all matters within the scope of the Secretary-initiated investigation and the Equal Rights Center complaint, the Agreement will not limit the Department's authority to investigate any future complaints brought under the Act against any or all Respondents or the ability of the Equal Rights Center to investigate any future complaints brought under the Act against any or all Respondents
9. McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, Waterford Development-Falls Church, LLC, and the City of Falls Church hereby forever waive, release, and covenant not to sue the Department or the Equal Rights Center or its successors, assigns, agents, officers, board members, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 03-04-0318-8, 03-04-0320-8, 03-04-0321-8, 03-04-0322-8, 03-04-0323-8, 175303, 175306, and 175307 or which could have been filed in any action or suit arising from said subject matter.
10. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the Assistant Secretary, or his/her designee.
11. The Equal Rights Center, the Respondents, and the Department agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.
12. Whenever the Department has reasonable cause to believe that any or all Respondents have breached this Agreement, the matter shall be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to § 810(c) of the Act.

B. SPECIFIC PROVISIONS

The Equal Rights Center and the Respondents agree that the following actions shall be undertaken by the respective parties as specified below:

1. As set forth in Resolution 2004-4 on January 12, 2004 (i.e., the City of Falls Church's release of condition 2 of the term sheet incorporated into SE01-0013), the City of Falls Church agrees not to assess school impact contributions for any or all future residential or mixed-use developments in the manner specified in condition 2 of the term sheet granting SE01-0013.
2. The City of Falls Church agrees to continue to assess school impact contributions on a non-discriminatory per unit basis. Specifically, in all cases where a developer seeks the granting of a special exception to the prohibition of mixed-use projects, the City of Falls

Church will accept a "voluntary community benefit contribution" from the developer. The "voluntary community benefit contribution" will be applied uniformly across all business districts and will be calculated by multiplying a per unit cash contribution amount by the number of market rate residential units, not including affordable dwelling units. The per unit cash contribution amount will apply to all market rate residential units, regardless of the nature of the development.

3. The Equal Rights Center and the City of Falls Church agree to enter into a partnership to further fair housing in the City of Falls Church.
4. The City of Falls Church agrees to continue to provide and promote housing for families with children in all residential and mixed-use projects. In furtherance of this commitment and to maximize fair housing, the City of Falls Church, in partnership with the Equal Rights Center, agrees to review the City of Falls Church procedures, guidelines, policies and ordinances pertaining to residential and mixed-use developments in order to develop best practices for school impact contributions.
5. To support the partnership and to resolve all matters raised in the Equal Rights Center complaint and the Secretary-initiated investigation, McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, and Waterford Development-Falls Church, LLC collectively have offered and the Equal Rights Center has accepted a contribution of \$120,000. This amount will be paid by certified or cashier's check to Relman & Associates within fourteen (14) days of the effective date of this Agreement. The check shall be made payable to Relman & Associates, and mailed to Relman & Associates by Federal Express or certified mail at the following address:

Relman & Associates
1225 Nineteenth Street, Sixth Floor
Washington, DC 20036

6. As a partnership initiative, the Equal Rights Center and the City of Falls Church agree to coordinate and conduct a one-day free fair housing conference before June 30, 2006, entitled "Northern Virginia Fair Housing Conference". Conference topics will include, but not be limited to, ways for localities to calculate and assess development-related fees that comply with the letter and spirit of the Act and shall be agreed to by both the City of Falls Church and the Equal Rights Center. The Equal Rights Center shall provide speakers and materials. The City of Falls Church shall provide conference facility space in the City Community Center for up to three hundred (300) pre-registered attendees; promotion for the conference; copying services; limited food and beverages (attendees are to have lunch on their own); and at the City of Falls Church's option, additional speakers.
7. As a partnership initiative and with the assistance of the City of Falls Church, the Equal Rights Center agrees to provide annual fair housing training for two years to staff and management of McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, Waterford Development-Falls Church, LLC, and the City of Falls

Church. In addition, the staff and management of McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, Waterford Development-Falls Church, LLC, and the City of Falls Church agree to attend the annual fair housing trainings provided by the Equal Rights Center. The trainings will be provided to the City of Falls Church Council Members, other elected City officials, and pertinent City staff. The trainings will include, but not be limited to, the Act's prohibition of familial status discrimination, especially as it relates to otherwise making housing unavailable (§ 804(a) of the Act) and discriminatory notices, statements and advertising (§ 804(c) of the Act). The duration of the trainings will be three hours and shall be conducted in the City Community Center. The Equal Rights Center shall develop the training materials, which shall be provided to the City of Falls Church at least fourteen (14) days prior to the training for review and comment. The City of Falls Church shall provide notices, registration, copying, and beverages. The first training will occur on or before June 30, 2005 and the second training will occur within a year of that time.

8. As a partnership initiative, the Equal Rights Center and the City of Falls Church will conduct fair housing education and outreach in the City of Falls Church. The City of Falls Church shall, for the next two years, promote fair housing outreach to the Falls Church community by: (i) securing quarterly advertisements in the local newspaper that promote fair housing compliance; (ii) developing fair housing information and materials on or before February 3, 2005 and distributing the fair housing information and materials to all multifamily developments under construction in the City of Falls Church and to the brokers of multifamily developments under construction in the City of Falls Church (the fair housing information and materials will also be available in the City of Falls Church Housing Office from January 3, 2005 through the term of this agreement); (iii) conducting meetings with staff of all multifamily developments under construction in the City of Falls Church to discuss compliance with fair housing laws and assure that fair housing notices are posted in all offices where buyers and potential buyers have contact with staff of the multifamily developments; and (iv) annual adoption of fair housing proclamations by the Falls Church City Council.
9. As a partnership initiative and with the assistance of the City of Falls Church, the Equal Rights Center will monitor, during the next two years, fair housing testing of mixed-use housing developments in the City of Falls Church. The City of Falls Church has contracted with Fair Housing Management Consultants of Annandale, Virginia to perform fair housing testing. Fair Housing Management Consultants, on behalf of the City, shall conduct two rounds of fair housing testing within mixed-use residential condominium developments. The first round of testing shall be completed by June 30, 2005, and the second round of testing shall be completed by June 30, 2006, subject to the marketing schedule for each new mixed-use residential condominium development. Each round of testing shall include a minimum of three tests per development. Each round of testing shall also include testing on the basis of familial status. At least fourteen (14) days prior to beginning of tests performed by Fair Housing Management Consultants pursuant to this provision, the Equal Rights Center shall be given a copy of test materials for comment. The Equal Rights Center shall also receive a copy of the test results within seven (7) days of the completion of the tests. If the test results

demonstrate the need for remedial actions, such actions shall be jointly considered by the Equal Rights Center and the City of Falls Church. In addition, the Equal Rights Center may, in its discretion and at its cost, conduct further investigation, including further possible testing, of tested private entities.

10. The City of Falls Church agrees to provide in-kind services to support the partnership including, but not limited to, staff time, space for partnership-related activities, and publication services for partnership-related materials.
11. Any publicity related to the matters considered during the course of conciliation, the investigation or the conciliation agreement that is conducted by the Equal Rights Center, McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, Waterford Development-Falls Church, LLC, and/or the City of Falls Church will emphasize the mutually beneficial partnership resulting from this Agreement. The parties to this section agree that all statements to third parties regarding the claims resolved in this Agreement shall be positive.

C. MONITORING, REPORTING, AND RECORDKEEPING

1. The Department shall determine compliance with the terms of this Agreement. The Equal Rights Center and the Respondents agree to provide their full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.
2. Within thirty (30) days of the effective date of this Agreement, counsel to McWilliams/Ballard, Inc., Nova-Habitat, Inc., Waterford Development, LLC, Waterford Development-Falls Church, LLC, shall transmit a photocopy of the instrument of payment identified in paragraph 5 in Section B of this Agreement, together with a copy of the delivery tracking report or certified mail receipt as evidence of delivery, to the Department.
3. On February 15, 2005, April 15, 2005, July 15, 2005, October 14, 2005, April 14, 2006, and October 2, 2006, the Equal Rights Center and the City of Falls Church shall submit a report to the Department. Representatives of the Equal Rights Center and the City of Falls Church agree to work together in the compilation, drafting, and submission of joint reports. Reports shall contain all of the following information and, where applicable, updates on items in the previously submitted report:
 - (a) Information related to the Northern Virginia Fair Housing Conference including, but not limited to, conference objectives, planning, how those objectives were achieved and measured, who was in attendance, how many people attended, what was presented, who presented, conference date(s) and location;
 - (b) Information related to fair housing tests conducted by the Fair Housing Management Consultants of new mixed-use housing developments in Falls

Church including, but not limited to, number of tests, sites tested, prohibited bases tested, results, and any remedial measures taken;

- (c) Information related to the fair housing education and outreach conducted in Falls Church by the Equal Rights Center and the City of Falls Church including, but not limited to, types of education and outreach activities conducted, dates the activities were conducted, materials utilized, where and how the outreach was conducted, and education and outreach audience/participants;
 - (d) Objective evidence of the successful completion of all fair housing trainings by all respondents, in the form of a list of all participants and a certificate or a letter from the Equal Rights Center; and
 - (e) The status of the review of the City of Falls Church's procedures, guidelines, policies and ordinances pertaining to residential and mixed-use developments and development of best practices for school impact contributions. The first report submitted shall include the plan for this review process and post-review approaches to developing best practices (i.e. identification of the procedures, guidelines, policies and ordinances to be reviewed, timeframes for completing the review, and City of Falls Church personnel who will be involved in the review and possible post-review activities). Subsequent reports shall summarize review activities (i.e., what has been reviewed, findings, and outstanding actions) and follow-up actions to be taken in light of the review's findings (i.e., actions to be taken and proposed timeframes for completion).
4. All required certifications and documentation of compliance must be submitted to:

Laverne L. Brooks
Director, Baltimore Fair Housing Program Center
U.S. Department of Housing and Urban Development
City Crescent Building
5th Floor
10 South Howard Street
Baltimore, MD 21201

D. SIGNATURES

The Equal Rights Center

By: Rabbi Bruce Kahn 16 November 2004
Rabbi Bruce Kahn, Executive Director Date

McWilliams/Ballard, Inc.

By: _____
Christopher Ballard Date

Nova-Habitat, Inc.

By: _____
Edward P. Novak, President Date

The City of Falls Church, Virginia

Daniel E. McKeever, City Manager Date

Waterford Development, LLC

By: _____
Jan Zachariasse Date

Waterford Development-Falls Church, LLC

By: _____
Jan Zachariasse Date

D. SIGNATURES

The Equal Rights Center

By: _____
Rabbi Bruce Kahn, Executive Director Date

McWilliams/Ballard, Inc.

By: Christopher Ballard, As President 11/16/04
Christopher Ballard Date

Nova-Habitat, Inc.

By: _____
Edward P. Novak, President Date

The City of Falls Church, Virginia

By: _____
Daniel E. McKeever, City Manager Date

Waterford Development, LLC


By: _____
Jan Zachariasse Date

Waterford Development-Falls Church, LLC


By: _____
Jan Zachariasse Date

D. SIGNATURES

The Equal Rights Center

By:  _____
Rabbi Bruce Kahn, Executive Director Date

McWilliams/Ballard, Inc.

By:  _____
Christopher Ballard Date

Nova-Habitat, Inc.

By:  _____
Edward P. Novak, President Date 4/12/04

The City of Falls Church, Virginia

By: _____
Daniel E. McKeever, City Manager Date _____

Waterford Development, LLC

By: _____
Jan Zachariasse Date _____

Waterford Development-Falls Church, LLC

By: _____
Jan Zachariasse Date _____

D. SIGNATURES

The Equal Rights Center

By: _____
Rabbi Bruce Kahn, Executive Director Date

McWilliams/Ballard, Inc.

By: _____
Christopher Ballard Date

Nova-Habitat, Inc.

By: _____
Edward P. Novak, President Date

The City of Falls Church, Virginia

By:  _____ 11/16/04
Daniel E. McKeever, City Manager Date

Waterford Development, LLC

By: _____
Jan Zachariasse Date

Waterford Development-Falls Church, LLC

By: _____
Jan Zachariasse Date

D. SIGNATURES

The Equal Rights Center

By: _____
Rabbi Bruce Kahn, Executive Director Date

McWilliams/Ballard, Inc.

By: _____
Christopher Ballard Date

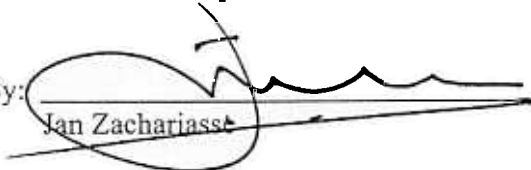
Nova-Habitat, Inc.

By: _____
Edward P. Novak, President Date

The City of Falls Church, Virginia

By: _____
Daniel E. McKeever, City Manager Date


Waterford Development, LLC

By:  _____
Jan Zachariasse Date 11-16-10y

Waterford Development-Falls Church, LLC

By:  _____
Jan Zachariasse Date 11-16-10y

U.S. Department of Housing and Urban Development

By: 
Jon L. Gant, Deputy Assistant Secretary for
Enforcement and Programs

19 Nov 04